

AMENDED IN SENATE APRIL 22, 2014
AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 943

Introduced by Senator Beall

February 4, 2014

An act to add Part 1.5 (commencing with Section 18300) to Division 5 of Title 2 of the Government Code, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as amended, Beall. California State University: personal services contracting.

Existing provisions of the State Civil Service Act establish standards for the use of personal services contracts by state agencies. An existing provision of the California Constitution excludes the officers and employees of the California State University from the state civil service.

Existing law authorizes the Trustees of the California State University to enter into agreements with public or private agencies, persons, officers, institutions, corporations, associations, or foundations for the performance of acts or for the furnishing of services, facilities, materials, goods, supplies, or equipment by or for the trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the trustees and the other party to the agreement.

This bill would establish standards for personal services contracts, similar to those of the State Civil Service Act, that would be applicable to the California State University. The bill would require the ~~Public Employment Relations~~ *State Personnel* Board to be notified of any proposed or executed personal services contract, and would require the

board, upon request of an employee organization, to review and disapprove a contract that does not meet those standards.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 1.5 (commencing with Section 18300) is
2 added to Division 5 of Title 2 of the Government Code, to read:

3
4 PART 1.5. PERSONAL SERVICES CONTRACTS FOR
5 CALIFORNIA STATE UNIVERSITY
6

7 18300. (a) For purposes of this part, the following definitions
8 apply:

9 (1) “Board” means the ~~Public Employment Relations State~~
10 *Personnel* Board.

11 (2) “Trustees” means the Trustees of the California State
12 University.

13 (3) “University” means an institution of higher education that
14 is part of the California State University.

15 (b) If any provision of this part conflicts with Section 89036 of
16 the Education Code, the provisions of this part shall prevail.

17 18301. (a) The purpose of this part is to establish standards
18 for the use of personal services contracts by the California State
19 University.

20 (b) Personal services contracting is permissible to achieve cost
21 savings when all the following conditions are met:

22 (1) The university clearly demonstrates that the proposed
23 contract will result in actual overall cost savings to the California
24 State University. In comparing costs, the following shall apply:

25 (A) There shall be included the California State University’s
26 additional cost of providing the same service as proposed by a
27 contractor. These additional costs shall include the salaries and
28 benefits of additional staff that would be needed and the cost of
29 additional space, equipment, and materials needed to perform the
30 function.

31 (B) The California State University’s indirect overhead costs
32 shall not be included unless these costs can be attributed solely to
33 the function in question and would not exist if that function was

1 not performed in regular university employment service. Indirect
2 overhead costs shall mean the pro rata share of existing
3 administrative salaries and benefits, rent, equipment costs, utilities,
4 and materials.

5 (C) There shall be included in the cost of a contractor providing
6 a service any continuing costs to the California State University
7 that would be directly associated with the contracted function.
8 These continuing costs shall include, but not be limited to, those
9 for inspection, supervision, and monitoring.

10 (2) Proposals to contract out work shall not be approved solely
11 on the basis that savings will result from lower contractor pay rates
12 or benefits. Proposals to contract out work shall be eligible for
13 approval if the contractor's wages are at the industry's level and
14 do not significantly undercut university pay rates.

15 (3) The contract does not cause the displacement of university
16 employees. The term "displacement" includes layoff, demotion,
17 involuntary transfer to a new classification, involuntary transfer
18 to a new location requiring a change of residence, and time base
19 reductions. Displacement does not include changes in shifts or
20 days off, or reassignment to other positions within the same
21 classification and general location.

22 (4) The contract does not adversely affect the trustees'
23 nondiscrimination efforts.

24 (5) The savings shall be large enough to ensure that the savings
25 will not be eliminated by private sector and state cost fluctuations
26 that could normally be expected during the contracting period.

27 (6) The amount of savings clearly justify the size and duration
28 of the contracting agreement.

29 (7) The contract is awarded through a publicized, competitive
30 bidding process.

31 (8) The contract includes specific provisions pertaining to the
32 qualifications of the staff that will perform the work under the
33 contract, as well as assurance that the contractor's hiring practices
34 meet applicable nondiscrimination standards.

35 (9) The potential for future economic risk to the trustees from
36 potential contractor rate increases is minimal.

37 (10) The contract is with a firm. A "firm" means a corporation,
38 partnership, nonprofit organization, or sole proprietorship.

1 (11) The potential economic advantage of contracting is not
2 outweighed by the public's interest in having a particular function
3 performed directly by university employees.

4 (c) Personal services contracting also shall be permissible when
5 any of the following conditions are met:

6 (1) The contract is for a new university function and the
7 Legislature has specifically mandated or authorized the
8 performance of the work by independent contractors.

9 (2) The services contracted are not available through regular
10 university employment procedures, cannot be performed
11 satisfactorily by university employees, or are of such a highly
12 specialized or technical nature that the necessary expert knowledge,
13 experience, and ability are not available through the pool of
14 university employees.

15 (3) The services are incidental to a contract for the purchase or
16 lease of real or personal property. Contracts under this criterion,
17 known as "service agreements," shall include, but not be limited
18 to, agreements to service or maintain office equipment or
19 computers that are leased or rented.

20 (4) The legislative, administrative, or legal goals and purposes
21 cannot be accomplished through the utilization of persons selected
22 pursuant to the regular university employment process. Contracts
23 are permissible under this criterion to protect against a conflict of
24 interest or to ensure independent and unbiased findings in cases
25 where there is a clear need for a different, outside perspective.
26 These contracts shall include, but not be limited to, obtaining expert
27 witnesses in litigation.

28 (5) The contractor will provide equipment, materials, facilities,
29 or support services that could not feasibly be provided by university
30 employees in the location where the services are to be performed.

31 (6) The contractor will conduct employee training courses for
32 which appropriately qualified university employee instructors are
33 not available, provided that permanent instructor positions in
34 academies or similar settings shall be filled through the regular
35 university employment process.

36 (7) The services are of such an urgent, temporary, or occasional
37 nature that the delay incumbent in their implementation through
38 regular university employment procedures would frustrate their
39 very purpose.

1 (d) All persons who provide services to the California State
2 University under conditions the board determines constitute an
3 employment relationship shall be retained pursuant to regular
4 university employment procedures.

5 18302. (a) A university that proposes to execute a personal
6 services contract pursuant to this part shall notify the board of that
7 intention. All organizations that represent university employees
8 who perform the type of work to be contracted, and any person or
9 organization that has filed with the board a request for notice, shall
10 be contacted immediately by the board upon receipt of this notice
11 so that they may be given a reasonable opportunity to comment
12 on the proposed contract.

13 (b) When a university submits a proposed contract, the university
14 shall retain and provide all data and other information relevant to
15 the contract and necessary for a specific application of the standards
16 for personal services contracts established in Section 18301.

17 (c) An employee organization may request, within 10 days of
18 notification, the board to review a contract proposed or executed
19 pursuant to this part. Upon a request, the board shall review the
20 contract for compliance with the standards for personal services
21 established in Section 18301. The board shall disapprove a contract
22 that does not comply with the standards.

23 (d) The board may adopt regulations to administer the provisions
24 of this part relating to the review of personal service contracts.

25 18303. (a) Upon the request of an employee organization that
26 represents employees of the California State University, the board
27 shall review the adequacy of a personal services contract proposed
28 or executed pursuant to this part. A contract that was reviewed at
29 the request of an employee organization when it was proposed
30 need not be reviewed again after its execution.

31 (b) (1) Unless a personal services contract is necessary due to
32 a sudden and unexpected occurrence that poses a clear and
33 imminent danger, requiring immediate action to prevent or mitigate
34 the loss or impairment of life, health, property, or essential public
35 services, the contract shall not be executed until the university
36 proposing to execute the contract has notified all organizations
37 that represent university employees who perform the type of work
38 to be contracted.

1 (2) At a minimum, the notice shall include a full copy of the
2 proposed contract. The university may redact specific confidential
3 or proprietary information from the notice.

4 (3) The board shall establish a process to certify the notification
5 in paragraph (1).

6 18304. (a) If a contract is disapproved by action of the board,
7 the university shall immediately discontinue that contract, unless
8 ordered otherwise by the board. The university shall not circumvent
9 or disregard the board's action by entering into another contract
10 for the same or similar services or to continue the services that
11 were the subject of the contract disapproved by the board.

12 (b) If a university is ordered to discontinue a contract, the
13 university shall serve notice of the discontinuation of the contract
14 to the vendor within 15 days from the board's final action unless
15 a different notice period is specified. A copy of the notice also
16 shall be served on the board and the employee organization that
17 filed the contract challenge. Failure to serve this notice may be
18 grounds for rejection of future contracts for the same or similar
19 services that were discontinued.